IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2006

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.230 & 231 of 2003

The Commissioner of Income-tax,
Tamil Nadu IV,
Madras. ..Appellant

Vs

M/s.Altek Lammertz Needles Limited,
86-B, Santhome High Road,
Raja Annamalaipuram,
Chennai-600 028. ..Respondent

Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras, 'B' Bench dated 30.03.2001 in I.T.A. Nos.1367 & 1368/Mds/1999 for the assessment years 1994-95 and 1995-96 against the order of the Commissioner of Income-Tax (Appeals) IV, Chennai dated 28.06.99 and made in I.T.Appeal Nos.260 and 259/98-99 against the order of the Assistant Commissioner of Income-Tax, Company Circle IV(1) Chennai dated 15.12.1997 and made in PAN/GIR.No.829A.

For Appellant : Mrs.Pushya Sitaraman,
Sr.Standing Counsel for
Income-tax Department

For Respondent : Mr.K.Ravi

JUDGMENT

(Judgment of the Court was delivered by P.P.S.Janarthana Raja, J.)

These appeals are filed by the Revenue under Section 260A of the Income Tax Act, 1961 in I.T.A. Nos.1367 & 1368/Mds/1999, passed by the Income Tax Appellate Tribunal, Madras, 'B' Bench. On 16.02.2004, this Court admitted these appeals and formulated the following substantial questions of law:

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"1. Whether in the facts and under the circumstances of the case, the Tribunal was right in holding that the pre-operative expenses prior to commencement of production could be set off against interest received on deposits?

2. Whether in the facts and under the circumstances of the case, interest received on deposits can be treated as business income?"

2. The brief facts leading to the above questions of law are as under:

The assessee is a company engaged in the business of manufacture of Industrial Sewing Machine Needles. The company is a domestic company in which the public are not substantially interested. The relevant assessment years are 1994-95 and 1995-96 and the corresponding accounting years ended on 31.03.1994 and 31.03.1995, respectively. For the assessment year 1994-95, assessee filed Return of income on 28.02.1995 admitting a total income of Rs.82,050/-. Since the Return was filed belatedly, notice under Section 148 of the Income-tax Act (hereinafter referred to as the "Act"), was issued to the assessee company and the assessment was completed. For the assessment year 1995-96, assessee filed Return of income on 06.11.1995 admitting a total income of Rs.3,00,970/-. The Return was processed under Section 143(1)(a) of the Act, on 03.01.1996. Later, the Assessing Officer passed regular assessment orders, determining a total income of Rs.3,38,670/- for the assessment year 1994-95 and Rs.12,11,130/- for the assessment year 1995-96, respectively. While completing the assessments, the Assessing Officer treated the interest from deposit amount and also the bill discounting as income from other sources, without deducting any expenses claimed by the assessee. Aggrieved by the orders, the assessee filed appeals to the Commissioner of Income-tax (Appeals). The C.I.T.(A) dismissed the appeals filed by the assessee and confirmed the orders of the Assessing Officer. Aggrieved, the assessee filed appeals to the Income-tax Appellate Tribunal (hereinafter referred to as the "Tribunal"). The Tribunal directed the Assessing Officer to allow the deduction of expenses as claimed by the assessee, and allowed the appeals.

3. Learned Senior Standing Counsel appearing for the Revenue submitted that the Tribunal is wrong in allowing certain administrative expenses which have no connection whatsoever with the earning of the income. Further it is contended that all the expenses are not allowable in computing the income under Section 57 of the Act. It is also further submitted that the Tribunal had not given a specific finding with regard to the nature of the expenses and hence, the matter may be remanded with a direction to reconsider the issue.

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4. Learned counsel appearing for the assessee submitted that the Tribunal has given a clear finding that these expenses are related to earning of the interest and hence it is allowable under the provisions of the Act. He also further submitted that, when there being a clear finding of facts, no interference is necessary.

5. Heard the counsel. We have gone through the order of the Tribunal. It is stated in the said order of the Tribunal as under:

> "4. Rival contentions on the point at issue have been very carefully considered. At the outset we may observe that the assessee is not at all disputing the fact that the income that has been offered by it namely bill discounting, interest, etc. are taxable. The dispute of the assessee is that the expenditure that is relatable to the setting up of the needle manufacturing unit has been capitalised and that there are other expenses incurred by it on the administration and for purposes of earning of interest income and bill discounting income, which should not have been capitalised. The other dispute is that the assessee, being a company, has to incur certain administrative expenses irrespective of its activities. In our opinion, there is considerable merit in the claim of the assessee. The company has been earning income from bill discounting and investments for the last several years and all along the same had been taxed and the expenses had been allowed and this is not in dispute. Therefore, the expenses other than what the assessee had capitalised, are clearly relatable to the earning of interest and for its normal functioning to comply with the requirements under the Companies Act, Income-tax Act and other statutes. The assessability of the income u/s. 56 is also not in dispute and as observed above, the assessee is seeking deduction of certain expenses. The claim of the assessee, in our opinion, is allowable because the expenses have been partly incurred in the normal course with the setting up of the needles manufacturing unit. The expenses relatable to the new unit have been identified and have been capitalised. We, therefore, direct the AO to allow deduction of the expenses as claimed by the assessee."

From a reading of the above, it is clear that the Tribunal has not given any specific finding in respect of the nature of expenses incurred by the

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assessee. Unless it gives reason that the expenditure is incurred wholly and exclusively for the purpose of making or earning such income, the said expenditure is not allowable under Section 57 of the Act. Section 57 of the Act, deals with deductions, which reads as under:

> "Deductions.
> 57. The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely:-
> (i) ....
> (ii)....
> (iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income."

The Tribunal is the last fact finding authority and the Tribunal is required to examine the materials and records before rendering a decision on any issue raised by the parties. The Tribunal ought to have decided the case by recording complete facts and assigning cogent reasons. It is found that there is no specific finding by the Tribunal as to how the expenditure is allowable under Section 57 of the Act. Hence, we set aside the order of the Tribunal with a direction to rehear the matter afresh, after giving opportunity to both the parties and permit the counsel for the assessee as well as the Revenue to furnish materials, evidence and case law, if any, in support of their contentions and consider the same and pass orders in accordance with law as expeditiously as possible. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Assistant Registrar,
Income-Tax Appellate Tribunal
Rajaji Bhavan, III Floor,
Besant Nagar, Chennai - 90.

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2. The Commissioner of Income-Tax,
(Appeals) IV, Chennai

3. The Assistant Commissioner of
Income-Tax, Company Circle IV(1),
Chennai.

4. The Commissioner of Income-Tax
Tamil Nadu IV, Madras.

1 cc To Mrs.Pushya Sitaraman, Advocate, SR.54773.

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NG(CO)
RVL 21.12.2006

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